

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sylvia Davidovicz	Team: Squad #12	CCRB Case #: 201907489	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 08/19/2019 6:54 PM	Location of Incident: East 181st Street and Washington Avenue	Precinct: 48	18 Mo. SOL 2/19/2021	EO SOL 10/6/2021	
Date/Time CV Reported Thu, 08/22/2019 3:01 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 08/22/2019 3:01 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Gabriella Deleon	17984	965494	GANG BX
2. POF Jessica Myrthil	06109	964673	048 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Kevin Mcspedon	24156	963158	048 PCT
2. POM Taulant Gjonbalaj	23964	963046	048 PCT
3. SGT Ayotunde Adeniyi	01246	934370	048 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Gabriella Deleon	Abuse: Police Officer Gabriella Deleon stopped § 87(2)(b)	
B.POF Jessica Myrthil	Abuse: Police Officer Jessica Myrthil stopped § 87(2)(b)	
C.POF Gabriella Deleon	Abuse: Police Officer Gabriella Deleon forcibly removed § 87(2)(b) to the hospital.	
D.POF Jessica Myrthil	Abuse: Police Officer Jessica Myrthil forcibly removed § 87(2)(b) to the hospital	
E.POF Gabriella Deleon	Abuse: Police Officer Gabriella Deleon seized § 87(2)(b)'s property.	
F.POF Jessica Myrthil	Abuse: Police Officer Jessica Myrthil seized § 87(2)(b)'s property.	

Case Summary

On August 22, 2019, § 87(2)(b) filed this complaint with the CCRB via telephone.

On August 19, 2019 at 6:54 PM, near the intersection of East 181st Street and Washington Avenue in the Bronx. Police Officer Gabriella Deleon and Police Officer Jessica Myrthil stopped § 87(2)(b) (**Allegation A:** § 87(2)(g) **Allegation B:** § 87(2)(g) PO Deleon and PO Myrthil then forcibly removed § 87(2)(b) to a hospital (**Allegation C:** § 87(2)(g) **Allegation D:** § 87(2)(g) When they removed him to the hospital, PO Deleon and PO Myrthil seized § 87(2)(b)'s tennis racket; the racket was never returned to § 87(2)(b) (**Allegation E:** § 87(2)(g) **Allegation F:** § 87(2)(g)

The responding officers' body-worn cameras captured the incident (Board Review 04, 05, 06, 07, 08; Video summaries in Board Review 20, 21, 22, 23, 24).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Gabriella Deleon stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Jessica Myrthil stopped § 87(2)(b)

It is undisputed that, on August 19, 2019, at approximately 6:54 PM, § 87(2)(b) was swinging a tennis racket on the sidewalk in the vicinity of East 181st Street and Washington Avenue in the Bronx. § 87(2)(b) was wearing blue shorts and no shirt. An individual called 911 and stated that § 87(2)(b) was swinging his tennis racket at people. PO Deleon and PO Myrthil responded to the call and stopped § 87(2)(b)

In his CCRB interview, § 87(2)(b) stated that he was swinging the racket because he was practicing tennis serves without a ball (Board Review 01). He stayed within an approximately 15-foot stretch of sidewalk on Washington Avenue, by the northeast corner of Washington Avenue and 181st Street (Board Review 13). The sidewalk was mostly empty, with pedestrians passing by once every two hours. When he saw people approaching, § 87(2)(b) would stop practicing from when they were about three car-lengths away to after they had passed him. § 87(2)(b) never swung his racket at anyone. Nobody told § 87(2)(b) to stop practicing. § 87(2)(b) spent approximately four hours practicing tennis on the sidewalk, starting at 3:00 PM and ending at 6:54 PM. At a time determined by the investigation to be 6:54 PM, a marked NYPD sedan pulled up next to § 87(2)(b) § 87(2)(b) stopped practicing and walked away from the car, northbound on Washington Avenue. PO Deleon and PO Myrthil exited the vehicle and approached § 87(2)(b) PO Deleon stated that they had received a complaint and asked § 87(2)(b) what he was doing. § 87(2)(b) stated, "I plead the fifth," and did not answer any of their questions.

PO Deleon and PO Myrthil's BWC videos show that § 87(2)(b) was wearing blue shorts and carrying a tennis racket, matching the 911 caller's description (Board Review 04, 05). PO Deleon's video begins as she parks and exits her car while PO Myrthil's video begins after she has already exited the car and is speaking to § 87(2)(b) The videos do not show § 87(2)(b) swinging the racket at or near any pedestrians.

At 6:48 PM on the date of the incident, an unidentified individual made a 911 call regarding § 87(2)(b) (Board Review 12, Board Review 14). The caller stated that an individual who appeared to be mentally ill was swinging a tennis racket near the intersection of 181st Street and Washington Avenue. She stated that he was treating the racket as a weapon and trying to hit people. The caller described the individual as a black male with a heavy build wearing no shirt, blue pants, and one shoe.

In her CCRB interview, PO Deleon stated that, from her car, she saw § 87(2)(b) darting between cars and trees, looking into car windows, and swinging a tennis racket when she arrived on the scene (Board Review 02). § 87(2)(b) did not swing the racket directly at anyone, but people were keeping their distance to avoid him. PO Deleon recognized § 87(2)(b) based on the 911 caller's description and because she had encountered him once before. During that encounter, § 87(2)(b) was removed to the hospital as an emotionally disturbed person. § 87(2)(b) stood behind a parked car and lifted the handle of his tennis racket. To PO Deleon, it looked like § 87(2)(b) was about to try to break the car's window. When § 87(2)(b) saw the officers, he ducked down behind the car. At this point, PO Deleon and PO Myrthil got out of the car, approached § 87(2)(b) and asked what he was doing. PO Deleon stated that she and PO Myrthil stood around § 87(2)(b) so that he could not leave easily.

PO Myrthil's statement to the CCRB was identical to that of PO Deleon except that she stated that she did not see § 87(2)(b) swinging his tennis racket near people or cars (Board Review 03).

According to section 212-11 of the Patrol Guide, a Level 3 stop is defined as "any encounter between a civilian and a uniformed member of the service in which a reasonable person would not feel free to disregard the officer and walk away" (Board Review 25). Officers must have "reasonable suspicion that the person has committed, is committing, or is about to commit a felony or Penal Law misdemeanor" in order to rightfully stop and detain them in this way. Once the person has been stopped, officers are directed to question the suspect and investigate whether an arrest is necessary.

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Gabriella Deleon forcibly removed

§ 87(2)(b) **to the hospital.**

Allegation (D) Abuse of Authority: Police Officer Jessica Myrthil forcibly removed § 87(2)(b) to the hospital.

It is undisputed that when PO Deleon and PO Myrthil stopped § 87(2)(b) § 87(2)(b) refused to speak to them. When asked for his name and to explain what he was doing, § 87(2)(b) said, “I plead the Fifth.” § 87(2)(b) was ultimately removed to a hospital for psychiatric evaluation.

The BWC video shows that officers told § 87(2)(b) that he was not being arrested several times while asking for information (Board Review 05). The BWC video also depicts § 87(2)(b) § 87(2)(b) laying down on the ground without a shirt when the officers approach him. PO Deleon states that § 87(2)(b) is “harmless” at the 07:23 mark in the video. At the 00:10 mark in PO Myrthil’s BWC video, PO Myrthil and PO Deleon, who are both offscreen, ask § 87(2)(b) § 87(2)(b) what he is doing. He says, “I plead the Fifth.” One of the officers asks if § 87(2)(b) § 87(2)(b) did “something wrong” that would cause him to plead the Fifth Amendment, and he says, “Yeah.” At the 00:33 mark in the video, § 87(2)(b) asks if he has the right to remain silent. One of the officers says that he does, but that he will be transported to the hospital if he does not tell the officers what is going on. At the 01:00 mark in the video, § 87(2)(b) § 87(2)(b) lays down in the grass with his hands behind his back. At the 06:10 mark in the video, PO Myrthil states that the grass in which § 87(2)(b) has been standing and laying down is full of dog feces. At the 06:18 mark, PO Deleon tells § 87(2)(b) to be careful of where he steps to avoid the dog feces. § 87(2)(b) does not leave the grassy area. § 87(2)(b) § 87(2)(b) does not provide his name or explain what he is doing with the tennis racket at any point in the video.

In her CCRB interview, PO Deleon stated that, when she approached § 87(2)(b) he put his tennis racket on the ground and laid down on the ground with his hands behind his back. PO Deleon stated that, because of the report that § 87(2)(b) was swinging his racket at people, she believed that he was an emotionally disturbed person, a threat to others, and would hit somebody with his racket if he was left alone.

In her CCRB interview, PO Myrthil’s statement matched PO Deleon’s statement about § 87(2)(b) § 87(2)(b) posing a threat to others. PO Myrthil also stated that she believed that § 87(2)(b) § 87(2)(b) was unable to care for himself because he laid down on the ground even though he was not wearing a shirt.

The AIDED prepared in relation to this incident states that § 87(2)(b) did not threaten or attempt to harm anybody but was that he was unable to care for himself (Board Review 09). The form states that § 87(2)(b) was an emotionally disturbed person with a prior history with police.

Procedure 221-13 of the Patrol Guide deals with the procedures for officer interactions with emotionally disturbed persons (Board Review 18). An emotionally disturbed person is defined as “a person who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others.” The procedure states that when a person is determined to be emotionally disturbed after officer assessment, officers may transport the individual to a hospital for psychiatric evaluation.

§ 87(2)(g)

[REDACTED]

Allegation (E) Abuse of Authority: Police Officer Gabriella Deleon seized § 87(2)(b) s property.
Allegation (F) Abuse of Authority: Police Officer Jessica Myrthil seized § 87(2)(b) s property.

In his CCRB interview, § 87(2)(b) stated that PO Deleon seized § 87(2)(b) s tennis racket while removing him to the hospital.

In her CCRB interview, PO Deleon stated that she transported § 87(2)(b) s tennis racket to the hospital with him. § 87(2)(b) was transported in a patrol car with a cage in the back seat and the racket was transported in a different car. At the hospital, PO Deleon placed the racket under § 87(2)(b) s bed. Because § 87(2)(b) was not arrested, his property was not vouchered.

At the 15:18 mark in PO Deleon's BWC footage, she places the tennis racket in the back seat of her and PO Myrthil's marked NYPD sedan (Board Review 05). At the 16:17 mark, PO Deleon can be seen escorting § 87(2)(b) to a marked NYPD SUV, the vehicle to which PO Kevin McSpedon and PO Taulant Gjonbalaj were assigned. The footage ends before PO Deleon and PO Myrthil arrive at the hospital with the racket.

The investigation did not obtain video evidence from inside of the hospital. All of the involved officers turned off their BWCs before entering the hospital.

§ 87(2)(b) s medical records from his removal to the hospital do not mention there being a tennis racket at the hospital (Board Review 16; privileged document).

The AIDED report prepared in relation to the incident does not mention a tennis racket.

§ 87(2)(g)

[REDACTED]

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint. In it, he has been named as a victim in six allegations (Board Review 17).
- PO Deleon has been a member-of-the service for two years and this is the first CCRB complaint to which she has been a subject.
- PO Myrthil has been a member-of-service for two years and has been the subject of two complaints and four allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation because § 87(2)(b) filed a civil suit.
- As of March 18, 2020, § 87(2)(b) is suing PO Deleon for \$22,230 and the return of his tennis racket. The suit was filed with the city on § 87(2)(b) (Board Review 10, Board Review 15).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 12

Investigator:	<u>Sylvia Davidovicz</u>	Inv. Sylvia Davidovicz	04/13/2020
	Signature	Print Title & Name	Date

Squad Leader:	<u>Carlmais Johnson</u>	<u>IM Carlmais Johnson</u>	<u>April 13, 2020</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date